

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3 WESTERN DIVISION

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5 THOMAS HEYER and ROBERT BOYD, :

6 Plaintiffs, :

7 v. : Civil Action No.

8 UNITED STATES BUREAU OF : 5:11-CT-3118-D

9 PRISONS, et al., :

10 Defendants. :

11 - - - - - x

12 SENSITIVE - SUBJECT TO PROTECTIVE ORDER

13 Deposition of U.S. BUREAU OF PRISONS,

14 By and through its Designated Representative,

15 TODD RODRICK CRAIG

16 Washington, DC

17 Thursday, January 9, 2014

18 9:39 a.m.

19  
20 Job No.: 49884

21 Pages: 1 - 303

22 Reported by: Lee Bursten, RMR, CRR

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1 MR. HOFFMAN: Okay. If we could go off the  
2 record for just a moment.

3 (Discussion off the record.)

4 BY MR. HOFFMAN:

5 Q Mr. Craig, before we took the last break,  
6 we were speaking about Plaintiffs' Exhibit Number 71,  
7 your December 20th report. And we were speaking  
8 about the impediments that your office had identified  
9 to implementing the solution of recording VRS calls  
10 via VCR or DVR recorder. I'm going to ask you a few  
11 more questions about that.

12 One of the impediments that BOP has  
13 identified to recording VRS calls using VCR or DVR is  
14 that it is not automated. Is that correct?

15 A That is correct.

16 Q And isn't it correct that recording of TTY  
17 calls is not automated either?

18 A Correct.

19 Q The BOP has identified as another  
20 impediment to recording videophone calls through VCR  
21 or DVR, one of the impediments being that using those  
22 methods is not sufficiently robust to ensure that "a

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1 significant number of recordings can be retained."

2 Is it true that's one of the impediments  
3 that you have identified?

4 A Yes.

5 Q And isn't it true that the same impediment  
6 is in place with respect to the recording of TTY  
7 calls?

8 A Could be.

9 Q It could be how? How could it be an  
10 impediment -- I'm sorry, how could it be a concern  
11 with respect to recording TTY calls?

12 A Well, storage space. That's the central  
13 issue. Eventually you run out of file...

14 Q File cabinets?

15 A File cabinets, yes. So the answer would  
16 then be yes.

17 Q Another impediment that you have identified  
18 with respect to recording videophones using a VCR or  
19 DVR is that neither of those VCR or DVR solutions is  
20 sufficiently robust to ensure that all VRS calls are  
21 recorded.

22 Is that one of the impediments that you've

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1 identified with respect to using a VCR or DVR?

2 A Yes.

3 Q Isn't that same concern also applicable to  
4 recording of TTY calls?

5 A Again, could be.

6 Q And how could it be applicable to recording  
7 TTY calls, how could that same concern be applicable?

8 A Can you refresh me which page?

9 Q Sure. We're at page 9 of the December 20th  
10 report, Bates number 4939. We're at the second to  
11 last paragraph, the last sentence of that paragraph.  
12 It begins, "Unfortunately, neither of these  
13 solutions."

14 A All right. Restate the last question,  
15 please.

16 Q Sure. So the first part of that sentence  
17 says, "Neither of these solutions," the VCR or DVR,  
18 "are automated and neither is sufficiently robust to  
19 ensure that all VRS calls are recorded." Those are  
20 the concerns about recording using VCR and DVR,  
21 right?

22 A Mm-hmm. Yes.

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1           Q       And you testified earlier, the concern here  
2       is that BOP -- it's not automated in that BOP staff  
3       would have to manually press play/record each time,  
4       right?

5           A       Yes.

6           Q       Isn't that same concern present with TTY?

7           A       Yes.

8           Q       Another impediment you've identified here  
9       on page 9 of page 4939 is that neither VCR recording  
10      or DVR recording is sufficiently robust to ensure  
11      that calls can be preserved with sufficient  
12      identifying information. Am I correct that's one of  
13      the impediments for recording via phone using VCR or  
14      DVR?

15          A       Yes.

16          Q       Isn't that same concern applicable to  
17      recording TTY calls?

18          A       Yes.

19          Q       And that's because -- and why is that?  
20      I'll say it that way.

21          A       Well, they're both storage of media, with a  
22      small M, media. And although the names, the inmates'

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1 identifying information, such as their first and last  
2 name or register number, could be inscribed on that,  
3 there's no guarantee that's going to be permanently  
4 embedded, unlike the electronic database of the  
5 Inmate Telephone System, would preserve that with  
6 sufficient network backups in perpetuity.

7 Q Recording of TTY calls involves using a  
8 logbook, right?

9 A Manual. Manual inscription logbook, as  
10 well as compilation or filing of the written  
11 transcript.

12 Q And what kind of information is put in the  
13 logbook for TTY?

14 A Name, number, duration of call, and the  
15 call number it was placed to.

16 Q And so for TTY, the staff member has to  
17 manually write that information down with respect to  
18 each call?

19 A Agreed, or entered on a computer log or  
20 whatever.

21 Q Right. It's not automated, in that the  
22 staff member has to record that information manually

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1 in some way with each call?

2 A That is correct.

3 Q You also testified earlier that one of the  
4 impediments to providing -- to recording videophone  
5 using VHS or DVR is that another inmate or someone  
6 else could possibly destroy or tamper with the tapes,  
7 like the VHS tapes or CDs or DVDs. Am I correct  
8 that's a potential impediment to using this method?

9 A Absolutely.

10 Q And isn't it also correct that the same  
11 risk is there with respect to the TTY printouts?

12 A Yes.

13 Q You also mentioned DOJ IT security  
14 protocols earlier in connection with -- well, how did  
15 those come up? You tell me. How did DOJ IT security  
16 protocols factor in here?

17 A Absolutely they factor in.

18 Q And how do they factor in?

■ ■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]

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1 preexisted the agency's decision to implement  
2 enterprise-wide solutions.

3 Q In preparing this report, the December 20th  
4 report, Plaintiffs' Exhibit 71, did you consider  
5 whether the recording solutions, of recording through  
6 a VCR or DVR, could be implemented following the same  
7 protocols as TTY?

8 A No, I did not.

9 Q Why not?

10 A Because when I'm tasked to evaluate any new  
11 security technology or any device or application that  
12 falls within that realm, the direction I have been  
13 given is to look for an enterprise-wide solution, not  
14 do one-offs, not do one for one institution.

15 When we pilot a new technology, if it's  
16 successful there, then it's moved out to the whole  
17 enterprise, for, one, we're a policy-driven agency,  
18 consistency of policy; two, for cost effectiveness  
19 value to the taxpayer dollar; and three, to maintain  
20 security by an overarching centralized solution.

21 Q Is the provision of video remote  
22 interpreting that is at place in Tucson, is that an



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1 enterprise-wide solution?

2 A No. That was the local solution  
3 implemented as a result of that litigation.

4 Q Are you aware that video remote  
5 interpreting has not been implemented at Butner?

6 A I'm aware there has been a waiver obtained  
7 for VRI at Butner; but aware it's not been  
8 implemented, yes.

9 Q And why has it not been implemented at  
10 Butner?

11 A Because the policy decision has been made  
12 not to implement it.

13 Q Right. And that's what I'm asking. What's  
14 the policy decision?

15 A I'm not the policy maker.

16 Q Do you know -- first of all, who is the  
17 policy maker for that particular decision?

18 A For that -- let me talk.

19 Q Sure.

20 A One thing at a time, if we could. The  
21 policy of the Bureau of Prisons is codified in  
22 program statements that have some concomitant Code of

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1     also allows the user to copy, delete, and edit the  
2     information about each of the calls." And then the  
3     last sentence reads, "Although this type of  
4     functionality is desirable in a consumer grade  
5     program, it is not compatible with the BOP's need to  
6     record and preserve these calls in a way that is not  
7     subject to tampering by inmates."

8                     Am I correct that this portion I just read  
9     articulates a concern, an impediment to BOP's  
10    provision of videophones to deaf inmates?

11            A       Yes.

12            Q       In order for an inmate to tamper with the  
13    recorded data, both the recording itself and the data  
14    about date and time, etc., the inmate would need to  
15    have access to the computer, the keyboard and mouse  
16    running the program; isn't that right?

17            A       Correct.

18            Q       And if the separated solution I proposed  
19    earlier were provided, where the monitor and webcam  
20    were separated from the computer itself, this risk  
21    here of tampering by inmates would also be  
22    significantly reduced; isn't that correct?

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1 A Correct.

2 Q And in connection with this particular  
3 concern articulated on the top of page 9 in Exhibit  
4 71, in preparing this report, you didn't consider the  
5 separated solution that I described, right?

6 A I did not.

7 Q If you were to take that into consideration  
8 now, would you write the report in the same way?

9 A Recommendation -- the ultimate  
10 recommendation would be the same. For  
11 enterprise-wide solution that met all the records and  
12 security concerns, obviously if I studied that, I  
13 would address the evaluation of that. But I didn't.

14 Q So that potential solution I proposed, the  
15 separated solution as I'm now referring to it, would  
16 not change the outcome of your recommendation?

17 A Not on an enterprise level.

18 Q What about at a local level? Would it  
19 change the outcome of your recommendation?

20 A I would have to work with that individual  
21 warden to address it.

22 Q So your testimony is it might change the

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1 live and recorded monitoring, whereas, you know,  
2 absent that enterprise setup, the videophone or video  
3 relay service, VRI, which is much less of a concern  
4 because of the contractually obligated interpreter  
5 for prison management events, they all have the same  
6 attendant concerns.

7 Q And all TTY calls are live monitored,  
8 right?

9 A Correct.

10 Q And if you swapped out a videophone or  
11 video relay device with TTY, there is no reason why  
12 staff couldn't monitor it in the exact same way,  
13 right?

14 A Are you asking can staff provide direct  
15 staff supervision for a video call? Yes. But again,  
16 none of this stuff that I've articulated time and  
17 time again, would be --

18 Q Right. So let's keep ticking through the  
19 other stuff. We talked about DOJ IT security  
20 concerns. And you mentioned, you said it's a thick  
21 book, and there's many of them. And you mentioned I  
22 believe two in particular; one, data encryption.

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1 A Correct.

2 Q But that could be solved by doing the --  
3 using the Guardian program to encrypt recordings,  
4 right?

5 A Correct.

6 Q The other DOJ particular IT security  
7 standard we talked about was providing an unsecured  
8 DSL line, right?

9 A Well --

10 Q That's part of --

11 A Yes, that's part of it, counselor. But the  
12 security standard is nothing that doesn't pass all  
13 the standards will be attached to BOPNet or JUTNet,  
14 Bureau of Prisons network or Department of Justice  
15 network.

16 Q So other than those two, so under the  
17 umbrella of DOJ IT security concerns, just for the  
18 moment, the DOJ IT security concerns, we've  
19 identified two issues.

20 A I've identified the two most important.

21 Q What are other particular DOJ IT security  
22 concerns that would be raised by provision of

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1 solve this issue today and you picked up the phone,  
2 who would you call first?

3 A Probably the facility manager.

4 Q And what's that person's name?

5 A I don't know.

6 Q But there's a particular facilities manager  
7 assigned to --

8 A We have 38,000 staff in the Bureau of  
9 Prisons. Yes. Like I said, the individual I knew I  
10 worked with on a number of projects, and has left  
11 there.

12 Q Who is that individual?

13 A As previously stated, William Hammock.

14 Q And you testified earlier that provision of  
15 VRI at Tucson is not an enterprise-wide solution,  
16 correct?

17 A That's correct.

18 Q And it has not been implemented across all  
19 BOP institutions, and in fact, hasn't been  
20 implemented at any other BOP institutions; is that  
21 right?

22 A That's correct.

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1           Q       And why, given the importance of  
2       implementing enterprise-wide solutions as you've  
3       testified to, why is that the case, why is it only in  
4       that one location?

5           A       Because it was implemented to resolve the  
6       concern of that litigation. That was my  
7       understanding. But again, I didn't do the site  
8       survey. I didn't do the evaluation. I didn't ask  
9       for or secure the waiver.

10          Q       And you're aware that the deposition that  
11       you're sitting for today is in connection with  
12       litigation arising out of the treatment of inmates at  
13       Butner in North Carolina, correct?

14          A       I'm aware of that.

15          Q       And you're also aware that VRI has not been  
16       provided to Mr. Heyer and Mr. Boyd in Butner?

17          A       I'm aware of that.

18          Q       Given that there is also litigation  
19       demanding VRI, why has VRI not been implemented at  
20       Butner?

21                   MR. BREDENBERG: Objection. Speculation.

22                   BY MR. HOFFMAN:

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1 Q Go ahead.

2 A I'm not the warden of that facility, so I  
3 would not make that final decision.

4 Q Do you know why VRI has not been provided  
5 at Butner?

6 A I do not.

7 Q At the very outset of the deposition,  
8 counsel, your counsel, Ms. Dannels, made a note for  
9 the record that you were designated to testify in  
10 connection with two topics. And one of those topics  
11 that she described was defendants' consideration of  
12 whether to provide plaintiffs with access to a  
13 videophone and any impediments to providing such  
14 access.

15 Would you agree that that is the deposition  
16 topic for which you have been designated to testify  
17 today?

18 A Yes.

19 Q And do you understand that "plaintiffs"  
20 refers to plaintiffs, Mr. Tommy Heyer and Robert  
21 Boyd?

22 A Yes.